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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

2010 FEB -4 | A 9 55

KRISTIN K. MAYES, Chairman
GARY PIERCE
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP

AZ CORP COMMISSION
DOCKET CONTROL

In the matter of:

CAROL DEE AUBREY and JOHN DOE
AUBREY, husband and wife,

PROGRESSIVE ENERGY PARTNERS,
L.L.C., a Nevada limited liability company,

PROGRESSIVE ENERGY PARTNERS,
L.L.C. #1, a Nevada limited liability
company,

PROGRESSIVE ENERGY PARTNERS,
L.L.C. #2, a Nevada limited liability
company,

PROGRESSIVE ENERGY PARTNERS,
L.L.C. #3, a Nevada limited liability
company,

PROGRESSIVE ENERGY PARTNERS,
L.L.C. #4, a Nevada limited liability
company,

Respondents.

DOCKET NO. S-20723A-10-0042

**NOTICE OF OPPORTUNITY FOR HEARING
REGARDING PROPOSED ORDER TO
CEASE AND DESIST, ORDER FOR
RESTITUTION, ORDER FOR
ADMINISTRATIVE PENALTIES AND FOR
OTHER AFFIRMATIVE ACTION**

Arizona Corporation Commission

DOCKETED

FEB - 4 2010

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NOTICE: EACH RESPONDENT HAS 10 DAYS TO REQUEST A HEARING

EACH RESPONDENT HAS 30 DAYS TO FILE AN ANSWER

The Securities Division ("Division") of the Arizona Corporation Commission ("Commission") alleges that respondents CAROL DEE AUBREY, PROGRESSIVE ENERGY PARTNERS, L.L.C., PROGRESSIVE ENERGY PARTNERS, L.L.C. #1, PROGRESSIVE ENERGY PARTNERS, L.L.C. #2, PROGRESSIVE ENERGY PARTNERS, L.L.C. #3 and PROGRESSIVE ENERGY PARTNERS, L.L.C. #4 have engaged in acts, practices, and transactions

1 that constitute violations of the Securities Act of Arizona, A.R.S. § 44-1801 *et seq.* ("Securities
2 Act").

3 **I.**

4 **JURISDICTION**

5 1. The Commission has jurisdiction over this matter pursuant to Article XV of the
6 Arizona Constitution and the Securities Act.

7 **II.**

8 **RESPONDENTS**

9 2. Respondent CAROL DEE AUBREY ("AUBREY") is a married woman who at all
10 times relevant resided in Costa Mesa, California. At all times relevant, AUBREY conducted
11 business within Arizona in her individual capacity, and on behalf of respondents: (a)
12 PROGRESSIVE ENERGY PARTNERS, L.L.C. ("PEP") as its managing member; (b)
13 PROGRESSIVE ENERGY PARTNERS, L.L.C. #1 ("PEP#1") as its managing member; (c)
14 PROGRESSIVE ENERGY PARTNERS, L.L.C. #2 ("PEP#2") as its managing member; (d)
15 PROGRESSIVE ENERGY PARTNERS, L.L.C. #3 ("PEP#3") as its managing member; and (e)
16 PROGRESSIVE ENERGY PARTNERS, L.L.C. #4 ("PEP#4") as its managing member.
17 AUBREY has not been registered as a securities salesman or dealer by the Commission.

18 3. PEP was organized by AUBREY as a Nevada limited liability company on or about
19 June 16, 2005. At all times relevant, PEP maintained a principal place of business in Costa Mesa,
20 California. According to a certified copy of PEP's articles of organization filed with the Nevada
21 Secretary of State ("SOS"), PEP is a manager managed limited liability company. According to
22 certified copies of PEP's member and manager lists provided to the Division by the Nevada SOS,
23 AUBREY has at all times relevant been the managing member of PEP. At all times relevant, PEP
24 conducted business within Arizona for its own benefit, and on behalf of PEP#1, PEP#2, PEP#3 and
25 PEP#4 as their manager, "Custodian" and securities "Issuer." PEP has not been registered as a
26 securities salesman or dealer by the Commission.

1 4. PEP#1 was organized by AUBREY as a Nevada limited liability company on or
2 about July 29, 2005. At all times relevant, PEP#1 maintained a principal place of business in Costa
3 Mesa, California and conducted business within Arizona. According to a certified copy of PEP#1's
4 articles of organization filed with the Nevada SOS, PEP#1 is a manager managed limited liability
5 company. According to certified copies of PEP#1's member and manager lists provided to the
6 Division by the Nevada SOS, AUBREY has been at all times relevant the managing member of
7 PEP#1. According to PEP#1's operating agreement, its "Custodian" is PEP, and as PEP#1's
8 Custodian, PEP has the "full, exclusive, and complete discretion" to manage and control PEP#1's
9 business and financial affairs. PEP#1 has not been registered as a securities salesman or dealer by
10 the Commission.

11 5. PEP#2 was organized by AUBREY as a Nevada limited liability company on or
12 about September 20, 2006. At all times relevant, PEP#2 maintained a principal place of business in
13 Costa Mesa, California and conducted business within Arizona. According to a certified copy of
14 PEP#2's articles of organization filed with the Nevada SOS, PEP#2 is a manager managed limited
15 liability company. According to certified copies of PEP#2's member and manager lists provided to
16 the Division by the Nevada SOS, AUBREY has been at all times relevant the managing member of
17 PEP#2. According to PEP#2's operating agreement, its "Custodian" is PEP, and as its Custodian,
18 PEP has the "full, exclusive, and complete discretion" to manage and control PEP#2's business and
19 financial affairs. PEP#2 has not been registered as a securities salesman or dealer by the
20 Commission.

21 6. PEP#3 was organized by AUBREY as a Nevada limited liability company on or
22 about March 7, 2007. At all times relevant, PEP#3 maintained a principal place of business in Costa
23 Mesa, California and conducted business within Arizona. According to a certified copy of PEP#3's
24 articles of organization filed with the Nevada SOS, PEP#3 is a manager managed limited liability
25 company. According to certified copies of PEP#3's member and manager lists provided to the
26 Division by the Nevada SOS, AUBREY has been at all times relevant the managing member of

1 PEP#3. According to PEP#3's operating agreement, its "Custodian" is PEP, and as its Custodian,
2 PEP has the "full, exclusive, and complete discretion" to manage and control PEP#3's business and
3 financial affairs. PEP#3 has not been registered as a securities salesman or dealer by the
4 Commission.

5 7. PEP#4 was organized by AUBREY as a Nevada limited liability company on or
6 about August 30, 2007. At all times relevant, PEP#4 maintained a principal place of business in
7 Costa Mesa, California and conducted business within Arizona. According to a certified copy of
8 PEP#4's articles of organization filed with the Nevada SOS, PEP#4 is a manager managed limited
9 liability company. According to certified copies of PEP#4's member and manager lists provided to
10 the Division by the Nevada SOS, AUBREY has been at all times relevant the managing member of
11 PEP#3. According to PEP#4's operating agreement, its "Custodian" is PEP, and as its Custodian,
12 PEP has the "full, exclusive, and complete discretion" to manage and control PEP#4's business and
13 financial affairs. PEP#4 has not been registered as a securities salesman or dealer by the
14 Commission.

15 8. Respondent JOHN DOE AUBREY ("SPOUSE") was at all times relevant the
16 spouse of AUBREY. SPOUSE is joined in this action under A.R.S. § 44-2031(C) solely for the
17 purpose of determining the liability of the marital community.

18 9. At all times relevant, AUBREY was acting for her own benefit and for the benefit or
19 in furtherance of AUBREY and SPOUSE's marital community.

20 10. AUBREY, PEP, PEP#1, PEP#2, PEP#3 and PEP#4 may be referred to as
21 "RESPONDENTS."

22 III.

23 FACTS

24 11. From on or about December 21, 2005, to approximately 2008, RESPONDENTS
25 offered and sold unregistered securities within Arizona in the form of investment contracts and/or
26

1 limited liability company ("LLC") membership interests in PEP#1, PEP#2, PEP#3 and PEP#4
2 (the "Unit Investment(s)").

3 12. At all times relevant, RESPONDENTS represented to offerees and investors that
4 they were engaged in the business of developing oil and gas wells located on approximately
5 5,000 acres within Pleasants, Ritchie and Tyler Counties, West Virginia (the "Project").

6 13. At all times relevant, RESPONDENTS represented to offerees and investors that
7 each Unit Investment cost \$25,000. Alternatively, RESPONDENTS offered and sold one half of
8 a Unit Investment for \$12,500, and one quarter of a Unit Investment for \$6,250.

9 14. RESPONDENTS sold a total of eleven separate Unit Investments to eight Arizona
10 residents totaling \$218,750 as follows: (a) AUBREY and PEP sold four separate Unit
11 Investments in PEP#1 totaling \$68,750; (b) AUBREY and PEP sold three separate Unit
12 Investments in PEP#2 totaling \$50,000; (c) AUBREY and PEP sold two separate Unit
13 Investments in PEP#3 totaling \$25,000; and (d) AUBREY and PEP sold two Unit Investments in
14 PEP#4 totaling \$75,000.

15 15. At all times relevant, RESPONDENTS represented to investors that they would
16 pool Unit Investment money together to: (a) drill new oil and gas wells; and (b) re-work existing
17 oil and gas wells for the Project.

18 16. At all times relevant, RESPONDENTS offered and sold the Unit Investments by
19 making unsolicited telephone calls to Arizona residents who had no pre-existing relationship with
20 RESPONDENTS and/or who were unaware of RESPONDENTS and their oil and gas business
21 operations (the "Solicitation(s)").

22 17. For example, in late September 2006, AUBREY and PEP caused an unsolicited
23 telephone call to be made to an elderly Arizona resident regarding an opportunity to invest in the
24 Project. This Solicitation was made by a man who represented himself as a "Senior Account
25 Representative" for RESPONDENTS (the "SAR"). During the Solicitation, the SAR informed
26 the Arizona resident that the Unit Investments involved \$25,000 LLC membership interests in

1 PEP#1 and/or PEP#2 and RESPONDENTS' development of the West Virginia oil and gas well
2 Project.

3 18. The SAR explained that each of these Unit Investments would provide the
4 Arizona resident with substantial monthly returns and related tax deductions. The Arizona
5 resident explained to the SAR that because he was retired, he could not afford to purchase an
6 entire Unit Investment. The SAR then told the Arizona resident that he could purchase one half
7 of a Unit Investment in PEP#2 for \$12,500. The Arizona resident agreed, and mailed his check
8 made payable to PEP for \$12,500 to RESPONDENTS' business address at 2060 Placentia Ave.,
9 Suite A5, Costa Mesa, California 92627 on or about October 13, 2006 (the "Business Address").
10 Thereafter, RESPONDENTS caused to be sent to the Arizona investor documentation regarding
11 his purchase of a one half Unit Investment in PEP#2.

12 19. The Unit Investment documentation regarding this investor's purchase of one half
13 of a Unit Investment in PEP#2 is analogous to that sent to the other Arizona investors identified
14 above (collectively the "Documentation"). The Documentation sent by RESPONDENTS to
15 Arizona investors is enclosed in a glossy, two-pocket color folder titled "Progressive Energy
16 Partners, L.L.C. West Virginia" and includes, without limitation, a:

- 17 A. LLC Membership Certificate in the name of either PEP#1, PEP#2, PEP#3 or
18 PEP# 4 signed by AUBREY in her capacity as the "CUSTODIAN" for the LLC;
- 19 B. "Limited Liability Company Agreement" (the "Operating Agreement(s)") for the
20 LLC;
- 21 C. a "Private Placement Memorandum" for the LLC (the "PPM(s)"); and
- 22 D. Inserts and a brochure describing the profits and tax advantages to be had by
23 purchasing the Unit Investments (the "Brochure(s)").

24 20. The Operating Agreements for PEP#1, PEP#2, PEP#3 or PEP# 4 state that PEP is
25 the "Custodian" of the LLC (*i.e.*, PEP#1, etc.), and that:
26

1 The Custodian shall have full, exclusive, and complete discretion in the management and
2 control of the affairs of the LLC...and shall make all decisions affecting the LLC affairs,
3 including all decisions made regarding the administration, supervision, and management
4 of the LLC's business.

5 21. Each of the PPMs for the Unit Investments in PEP#1, PEP#2, PEP#3 or PEP# 4
6 state that PEP is the Custodian and "Issuer" of the Unit Investments.

7 22. The Operating Agreements and PPMs state that RESPONDENTS and the Unit
8 Investment investors will share the profits generated by the oil and gas well Project as follows:
9 (a) approximately 30 to 35 percent of the profits will go to RESPONDENTS; (b) approximately
10 57 percent will go to the Unit Investment investors; and (c) the remaining profits will go to third-
11 party oil and gas well lease holders.

12 23. The Brochures include photographs of working oil wells, maps and geographical
13 diagrams and various "REASONS TO INVEST IN OIL AND GAS," including: (a) the return of
14 the principal Unit Investment "in as little as 12 to 24 months;" (b) a "Greater than 50% Annual
15 Rate of Return" on the Unit Investment; and (c) the fact that the Unit Investments provided
16 "SIGNIFICANT TAX BENEFITS," including extensive tax deductions.

17 24. The Brochures also include projections stating that each \$25,000 Unit Investment
18 may provide profits of approximately \$23,069 to \$31,377 per year during the first year of
19 RESPONDENTS' oil and gas business operations. The Brochures further represent that:

20 Progressive Energy Partners goal is a simple one. We intend to make profits for our
21 investors by taking advantage of the 87 existing wells and 10 miles of existing operational
22 gas pipeline obtained by us for the purpose of our gas production.

23 25. At all times relevant, RESPONDENTS have also published information regarding
24 their oil and gas business operations, and information included in the Documentation discussed
25 above including, without limitation, the "REASONS TO INVEST IN OIL AND GAS," on their
26 website at <http://www.pepllc.net>.

27 26. The Unit Investment Documentation, and the articles of organization, Operating
28 Agreements and PPMs discussed above state that RESPONDENTS manage all aspects of the

1 Unit Investments, including the: (a) repair, rework and/or "re-completion" of oil and gas wells,
2 and the construction of new wells for the Project, as warranted; and (b) the marketing and sale of
3 the oil and gas produced by the Project. The Documentation further emphasizes that the success
4 of the oil and gas Project and related Unit Investments will depend on RESPONDENTS' superior
5 knowledge and understanding of oil exploration techniques and strategies.

6 27. The Unit Investment Documentation does not include any audited or unaudited
7 financial statements, or any information regarding RESPONDENTS' possible assets.

8 28. Although RESPONDENTS disclosed the purported benefits of the Unit
9 Investments to the Arizona investors both verbally during Solicitation phone calls, and in writing
10 via the Documentation, RESPONDENTS further failed to adequately disclose to them: (a) a
11 reasonable basis for their projected Unit Investment returns including, without limitation, the
12 nature and extent of RESPONDENTS' investigation and due diligence in determining the
13 projections; and (b) specific risks associated with the oil and gas investments including, but not
14 limited to the fact that the investors could lose all or a vast portion of their Unit Investment
15 money due unforeseen market fluctuations and/or declines, and the fact that the investments were
16 not secured by real or personal property.

17 **IV.**

18 **VIOLATION OF A.R.S. § 44-1841**

19 **(Offer or Sale of Unregistered Securities)**

20 29. From on or about December 21, 2005, to approximately 2008, AUBREY, PEP
21 and PEP#1 offered and sold securities in the form of investment contracts and/or limited liability
22 company membership interests in PEP#1, within Arizona.

23 30. From on or about September 20, 2006, to approximately 2008, AUBREY, PEP and
24 PEP#2 offered and sold securities in the form of investment contracts and/or limited liability
25 company membership interests in PEP#2, within Arizona.
26

31. From on or about March 7, 2007, to approximately 2008, AUBREY, PEP and PEP#3 offered and sold securities in the form of investment contracts and/or limited liability company membership interests in PEP#3, within Arizona.

32. From on or about August 30, 2007, to approximately 2008, AUBREY, PEP and PEP#4 offered and sold securities in the form of investment contracts and/or limited liability company membership interests in PEP#4, within Arizona.

33. The securities referred to above were not registered pursuant to Articles 6 or 7 of the Securities Act.

34. This conduct violates A.R.S. § 44-1841.

V.

VIOLATION OF A.R.S. § 44-1842

(Transactions by Unregistered Dealers or Salesmen)

35. RESPONDENTS offered or sold securities within Arizona while not registered as dealers or salesmen pursuant to Article 9 of the Securities Act.

36. This conduct violates A.R.S. § 44-1842.

VI.

VIOLATION OF A.R.S. § 44-1991

(Fraud in Connection with the Offer or Sale of Securities)

37. In connection with the offer or sale of securities within Arizona, RESPONDENTS directly or indirectly: (i) employed a device, scheme, or artifice to defraud; (ii) made untrue statements of material fact or omitted to state material facts that were necessary in order to make the statements made not misleading in light of the circumstances under which they were made; or (iii) engaged in transactions, practices, or courses of business that operated or would operate as a fraud or deceit upon offerees and investors. RESPONDENTS' conduct included, but is not limited to, disclosing to Arizona investors the purported benefits of the Unit Investments, including their purported profit potential, while further failing to disclose to them:

A. A reasonable basis for RESPONDENTS' projected Unit Investment returns including, without limitation, the nature and extent of RESPONDENTS' investigation and due diligence in determining the projections; and

B. Specific risks associated with the oil and gas investments including, but not limited to the fact that the investors could lose all or a vast portion of their Unit Investment money due unforeseen market fluctuations and/or declines, and the fact that the investments were not secured by real or personal property.

38. This conduct violates A.R.S. § 44-1991.

VII.

REQUESTED RELIEF

The Division requests that the Commission grant the following relief:

1. Order RESPONDENTS to permanently cease and desist from violating the Securities Act pursuant to A.R.S. § 44-2032;

2. Order RESPONDENTS to take affirmative action to correct the conditions resulting from their acts, practices, or transactions, including a requirement to make restitution pursuant to A.R.S. § 44-2032;

3. Order RESPONDENTS to pay the state of Arizona administrative penalties of up to five thousand dollars (\$5,000) for each violation of the Securities Act, pursuant to A.R.S. § 44-2036;

4. Order that the marital community of AUBREY and SPOUSE be subject to any order of restitution, rescission, administrative penalties, or other appropriate affirmative action pursuant to A.R.S. § 25-215; and

5. Order any other relief that the Commission deems appropriate.

VIII.

HEARING OPPORTUNITY

RESPONDENTS and SPOUSE may request a hearing pursuant to A.R.S. § 44-1972 and A.A.C. R14-4-306. **If RESPONDENTS or SPOUSE requests a hearing, the requesting**

1 **respondent must also answer this Notice.** A request for hearing must be in writing and received
2 by the Commission within 10 business days after service of this Notice of Opportunity for Hearing.
3 The requesting respondent must deliver or mail the request to Docket Control, Arizona Corporation
4 Commission, 1200 W. Washington, Phoenix, Arizona 85007. Filing instructions may be obtained
5 from Docket Control by calling (602) 542-3477 or on the Commission's Internet web site at
6 <http://www.azcc.gov/divisions/hearings/docket.asp>.

7 If a request for a hearing is timely made, the Commission shall schedule the hearing to begin
8 20 to 60 days from the receipt of the request unless otherwise provided by law, stipulated by the
9 parties, or ordered by the Commission. If a request for a hearing is not timely made the
10 Commission may, without a hearing, enter an order granting the relief requested by the Division in
11 this Notice of Opportunity for Hearing.

12 Persons with a disability may request a reasonable accommodation such as a sign
13 language interpreter, as well as request this document in an alternative format, by contacting
14 Shaylin A. Bernal, ADA Coordinator, voice phone number 602/542-3931, e-mail
15 sabernal@azcc.gov. Requests should be made as early as possible to allow time to arrange the
16 accommodation.

17 IX.

18 ANSWER REQUIREMENT

19 Pursuant to A.A.C. R14-4-305, if RESPONDENTS or SPOUSE requests a hearing, the
20 requesting respondent must deliver or mail an Answer to this Notice of Opportunity for Hearing
21 to Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona
22 85007, within 30 calendar days after the date of service of this Notice. Filing instructions may be
23 obtained from Docket Control by calling (602) 542-3477 or on the Commission's Internet web
24 site at <http://www.azcc.gov/divisions/hearings/docket.asp>.

25 Additionally, the answering respondent must serve the Answer upon the Division.
26 Pursuant to A.A.C. R14-4-303, service upon the Division may be made by mailing or by hand-

1 delivering a copy of the Answer to the Division at 1300 West Washington, 3rd Floor, Phoenix,
2 Arizona, 85007, addressed to Mike Dailey.

3 The Answer shall contain an admission or denial of each allegation in this Notice and the
4 original signature of the answering respondent or respondent's attorney. A statement of a lack of
5 sufficient knowledge or information shall be considered a denial of an allegation. An allegation
6 not denied shall be considered admitted.

7 When the answering respondent intends in good faith to deny only a part or a
8 qualification of an allegation, the respondent shall specify that part or qualification of the
9 allegation and shall admit the remainder. Respondent waives any affirmative defense not raised
10 in the Answer.

11 The officer presiding over the hearing may grant relief from the requirement to file an
12 Answer for good cause shown.

13 Dated this 4 day of February, 2010.

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16 Matthew J. Neubert
17 Director of Securities
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